

REMARKS

This responds to the Office Action dated May 21, 2007.

Claim 23 is amended, no claims are canceled, and no claims are added. Thus, claims 1-7 and 9-30 remain pending in this application.

§101 Rejection of the Claims

Claims 1-7 and 9-30 were rejected under 35 U.S.C. § 101 because the Office Action asserts that the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. Applicant respectfully traverses the rejection for at least the following reasons.

The specification states that “(t)he present invention is compact, mobile, relatively easy to use, and includes circuitry and control electronics that are simple and compatible with many known controllers and implantable devices.” (page 5, lines 2-4). In addition, the purpose of the controller and switch are described with reference to the example circuits shown in FIGS. 3-5. At page 7, line 28 to page 8, line 2, specific details are provided with respect to controller operation: “(i)n operation, controller 260 may activate switch 262 via control line C to connect battery voltage source 228 to amplifier 264 to increase (power up) the effective voltage provided to inductive coil 222.” Finally, a controller or processor is an element familiar to one of ordinary skill in the art. Applicant respectfully submits that one of ordinary skill in the art would be able to construct the controllers to enable the function of controlling, without undue experimentation. Thus, the Applicant respectfully submits that the claimed invention is supported by a specific and substantial asserted utility in addition to a well established utility. Should the rejection be maintained, Applicant respectfully requests that authority be cited to support the Office’s interpretation with respect to §101.

Applicant respectfully requests withdrawal of the §101 rejection of the claims.

§112 Rejection of the Claims

Claims 1-7 and 9-30 were rejected under 35 U.S.C. § 112, first paragraph. Applicant respectfully traverses the rejection for at least the following reasons. With respect to the 1st paragraph rejection, the Applicant refers to the discussion above with respect to the §101

rejection of the claims. Based at least on the specification citations made in that discussion, Applicant respectfully asserts that one of skill in the art would know how to use the claimed invention. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1-7 and 9-30.

Claim 23 was rejected under 35 U.S.C. § 112, second paragraph. Applicant has amended claim 23, and respectfully submits that Applicant is merely correcting a typographical error. Reconsideration and allowance of claim 23 are respectfully requested.

§102 Rejection of the Claims

Claims 12, 15 and 18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Itoga et al. (U.S. Patent No. 5,122,729, "Itoga"). Applicant respectfully traverses the rejection for at least the following reasons.

The Office Action states, "(t)he examiner is interpreting the detection coil 12 to be capable of detecting 'data' from the secondary coil 7 comprising changes in induced voltage resulting from changes in distance between the primary coil 3 and the secondary coil 7." Applicant respectfully submits that sensing or detecting a voltage (and thus a distance between coils, as disclosed in Itoga) is not "communicating data with inductive telemetry." One of ordinary skill in the art will understand that telemetry relates to "a communications system for the transmission of digital or analog data which represents status information on a remote process, function or device," as defined, for example, by *Newton's Telecom Dictionary*, 22nd Edition. Applicant respectfully submits that "sensing" or "detecting" a distance between (or relative placement of) coils using an analog feedback loop is not a "transmission of data." In addition, the cited reference does not show a controller programmed to control a coil to communicate data. Thus, Applicant respectfully submits that Itoga does not teach a "telemetry coil" as claimed in the present application.

With respect to independent claim 12, Applicant is unable to find among other things in the cited portion of Itoga, a circuit for a wireless handheld device configured for communicating data with inductive telemetry, including a telemetry coil driven by the first battery voltage source and controllable by the controller to communicate data with a second device using inductive telemetry, as recited in claim 12.

With respect to independent claim 15, Applicant is unable to find among other things in the cited portion of Itoga, a method of powering a handheld device configured for communicating data with a second device using inductive telemetry, including activating the telemetry coil to facilitate inductive telemetry for the communication of data between the handheld device and the second device, as recited in claim 15.

With respect to independent claim 18, Applicant is unable to find, among other things in the cited portion of Itoga, a method of powering a handheld device having a controller, a telemetry coil, and at least one battery providing a battery voltage, the method including communicating data with an implanted device using inductive telemetry, as recited in the claim.

Reconsideration and allowance of claims 12, 15 and 18 are respectfully requested.

§103 Rejection of the Claims

Claims 1, 2, 4, 11, 16, 22, 23, 24, 25, 26, 27, 28 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Itoga. Applicant respectfully traverses the rejection for at least the following reasons.

Applicant is unable to find, among other things in the cited portion of Itoga, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to communicate data with a telemetry coil of the implanted device using inductive telemetry, as recited in claim 1. Claims 2, 4 and 11 depend, either directly or indirectly, on independent claim 1, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 1.

Claims 22 and 23 depend on independent claim 12, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 12. Claims 16 and 24-26 depend, either directly or indirectly, on independent claim 15, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 15. Claim 27 depends on independent claim 18, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 18.

Applicant is unable to find, among other things in the cited portion of Itoga, a handheld device configured to communicate data with an implanted device using inductive telemetry,

including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to communicate data with a telemetry coil of the implanted device using inductive telemetry, as recited in claim 28. Claim 30 depends on independent claim 28, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 28.

Since all the elements of the claims are not found in the reference, Applicant assumes that the Examiner is taking Official Notice of the missing elements. Applicant respectfully objects to the taking of Official Notice with a single reference obviousness rejection and, pursuant to M.P.E.P. § 2144.03, Applicant respectfully traverses the assertion of Official Notice and requests that the Examiner cite references in support of this position.

Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to use the teaching of Itoga with an implanted device. Itoga does not provide any suggestion that its power supply device with voltage sensing would function with a device implanted within human tissue. In addition, Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to provide a switch to control current in Itoga. Further, the switch disclosed in the present subject matter is used to connect a power source to a telemetry coil, and applicant cannot find a telemetry coil in Itoga.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1, 2, 4, 11, 16, 22-28 and 30.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (715) 824-5144 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

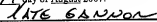
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6900

Date August 14, 2007

By / 
Daniel J. Mertes
Reg. No. 55,842

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of August 2007.

Name



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